

on the 1st June the statements of defence were filed. The order had not extended the time for filing the defence till particulars were delivered. Without any order permitting any further examination, the plaintiff now issues an appointment for the examination of an officer of the defendant company and of the defendant Mooney. On a motion to set this aside, the plaintiff contends that the examination had was not a general examination for discovery, but an examination under a special order, for the purpose of enabling him to give particulars. This view has been accepted by the learned Local Judge, and the motion dismissed.

Whatever may have been the intention when the order of the 23rd December was made, the rights of the parties depend upon the order as actually issued. Looking at it, as well as at the appointment for the examination in May, it is clear that this contention cannot prevail. The examination was an examination for discovery in the cause. The appointment must be set aside.

It may well be that Mr. Harding was under a misapprehension as to his rights, and did not examine generally, but confined himself to an examination upon the matters as to which particulars were ordered. This order will in no way prejudice any motion that may be made for a further examination. I merely determine that the first examination was an examination for discovery under Con. Rule 439, and therefore there was no right to further examination without an order having been obtained.

Appeal allowed and appointments set aside. Costs to the defendants in any event.

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RIDDELL, J.

OCTOBER 16TH, 1911.

RODGERS v. FISHER.

*Vendor and Purchaser—Contract for Sale of Land—Misrepresentation as to Quantity—Specific Performance with Abatement in Price—Lot Fronting on River—Survey.*

Action for specific performance of a contract to convey the whole of the north half of lot 16 in the township of Niagara, or for damages.

A. C. Kingstone, for the plaintiff.

J. S. Campbell, for the defendants.